

Mr. KEATING. I yield 4 minutes to the distinguished minority leader.

Mr. DIRKSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DIRKSEN. What is the pending motion?

The PRESIDING OFFICER. The pending motion is a motion to recommit the resolution.

Mr. DIRKSEN. Mr. President, on the motion to recommit, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. DIRKSEN. Mr. President, at first blush the resolution seems laudible, but one needs only to examine the "whereas" clauses to find that it admits real doubt. I noted, for instance, in the third clause of the preamble these words:

Whereas Presidents of the United States have from time to time made recess appointments to the Supreme Court, which actions were unquestionably taken in good faith and with a desire to promote the public interest, but without a full appreciation of the difficulties thereby caused the Members of this body—

What speculations? And what reflections on that score. But, I think, this resolution would convey to the public that we, the Senators, have had difficulties when a name has been submitted during an interim period when the Senate was not in session. Then the next whereas clause states:

Whereas there is inevitably public speculation on the independence of a Justice serving by recess appointment—

What speculation? And what reflections upon those who may have been appointed in an interim period and subsequently confirmed? I believe if I were an Associate Justice of the Supreme Court and read "whereas clause No. 4" of this resolution, I would wonder a little bit about the faith and the confidence of the confirming body under the Constitution, namely, the Senate of the United States.

This is a sort of blunderbuss approach. The Constitution states very simply that in the interim period the President shall have the power to grant individual commissions. That is individual power. It is the power to grant an individual commission. It does not deal with an institution. It deals with all the regulatory agencies with respect to which that power comes into being.

To me it looks like an effort to place an inhibition upon a power which is crystal clear. The proposal may represent the sense of the Senate as of this day in August 1960. It may not be the sense of the Senate a week later or a month later. It may not be the sense of the Senate in January, February, March, or at any other time in 1961.

I notice a growing tendency for so-called sense-of-the-Senate resolutions. I am becoming more and more dubious about this approach. It looks to me like tinkering. I hope the motion to recommit will be sustained.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DIRKSEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The opponents have no time remaining. Six minutes remain on the side of the proponents.

Mr. HART. Mr. President, of course I rise in opposition to the motion to recommit. I wish to make clear again on the RECORD, although it has been amply documented—and it should be stated again in fairness to the Supreme Court—that the resolution is not directed in criticism of any member of the bench, or of the Court as an institution. I do not direct it in criticism of any President.

However, I say that now, if ever, is the time when the Senate should express its sense that it is unfair to the Senate to be asked to consider action on a Supreme Court appointee when that man wears the robes of his office and has written opinions. If that is our belief, let us act now, when we do not know who the next President will be, when to our knowledge there is no vacancy to be anticipated on the Supreme Court, and when our action will not be tied with any individual.

The resolution merely provides that in the discharge of our constitutional duties we are terribly handicapped if we must face a man wearing his robes of office. It is much better for us, and much better for the Supreme Court itself that we not face this extraordinarily difficult dilemma, in the discharge of our responsibility and duty, of being faced with a man who has participated in the conduct and operation and activity of the highest court of the land. If we really believe it, let us not estop ourselves by our silence.

For that reason I hope that the motion to recommit will be defeated and that we will adopt the resolution. I yield back the remainder of my time. I suggest the absence of a quorum.

The PRESIDING OFFICER. All time has expired. The absence of a quorum has been suggested, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The yeas and nays have been ordered—

Mr. DIRKSEN. Mr. President, what is the question before the Senate, on which the yeas and nays have been ordered?

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New York [Mr. KEATING] to recommit the resolution. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

MR. MANSFIELD. I announce that the Senator from Virginia [Mr. BYRD], the Senator from New Mexico [Mr. CHAVEZ], the Senator from Illinois [Mr. DOUGLAS], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Tennessee [Mr. KEFAUVER], the

Senator from Oklahoma [Mr. KERR], the Senator from Oregon [Mr. LUSK], the Senator from Montana [Mr. MURRAY], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from Florida [Mr. SMATHERS] are absent on official business.

I further announce that the Senator from Missouri [Mr. HENNING] is absent because of illness.

I further announce that, if present and voting, the Senator from New Mexico [Mr. CHAVEZ], the Senator from Illinois [Mr. DOUGLAS], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Missouri [Mr. HENNING], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Oklahoma [Mr. KERR], the Senator from Montana [Mr. MURRAY], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from Florida [Mr. SMATHERS] would each vote "nay."

Mr. KUCHEL. I announce that the Senator from Iowa [Mr. MARTIN] is absent by leave of the Senate on official business.

The result was announced—yeas 33, nays 52, as follows:

[No. 317]

YEAS—33

Aiken	Cooper	Kuchel
Allott	Cotton	Morton
Beall	Curtis	Mundt
Bennett	Dirksen	Prouty
Bridges	Dworshak	Saltonstall
Bush	Fong	Schoeppel
Butler	Goldwater	Scott
Capehart	Hickenlooper	Smith
Carlson	Hruska	Wiley
Case, N.J.	Javits	Williams, Del.
Case, S. Dak.	Keating	Young, N. Dak.

NAYS—52

Anderson	Hart	Morse
Bartlett	Hill	Moss
Bible	Holland	Muskie
Burdick	Jackson	Pastore
Byrd, W. Va.	Johnson, Tex.	Proxmire
Cannon	Johnston, S.C.	Randolph
Carroll	Jordan	Robertson
Church	Kennedy	Russell
Clark	Lausche	Sparkman
Dodd	Long, Hawaii	Stennis
Eastland	Long, La.	Symington
Ellender	McCarthy	Talmadge
Engle	McClellan	Thurmond
Ervin	McGee	Williams, N.J.
Frear	McNamara	Yarborough
Gore	Magnuson	Young, Ohio
Green	Mansfield	
Gruening	Monroney	

NOT VOTING—15

Byrd, Va.	Hayden	Lusk
Chavez	Hennings	Martin
Douglas	Humphrey	Murray
Fulbright	Kefauver	O'Mahoney
Hartke	Kerr	Smathers

So the motion to recommit was rejected.

Mr. HART. Mr. President, I move that the vote by which the motion to recommit was rejected be reconsidered.

Mr. JOHNSON of Texas. Mr. President, I move to lay on the table the motion to reconsider.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now is on agreeing to the committee amendment.

16908

CONGRESSIONAL RECORD — SENATE

August 29

Mr. HRUSKA. Mr. President, I ask for the yeas and nays.

Mr. JOHNSON of Texas. On the question of agreeing to the resolution.

The PRESIDING OFFICER. Is the request for the yeas and nays on the question of agreeing to the committee amendment or on the question of agreeing to the resolution?

Mr. HRUSKA. On the question of agreeing to the resolution.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

Mr. LAUSCHE. Mr. President, is there still time in which to speak on the committee amendment?

The PRESIDING OFFICER. There is not; all time has expired.

The question is on agreeing to the committee amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The question now is on agreeing to the resolution, as amended. On this question, the yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD. I announce that the Senator from Virginia [Mr. BYRD], the Senator from New Mexico [Mr. CHAVEZ], the Senator from Illinois [Mr. DOUGLAS], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Oklahoma [Mr. KERR], the Senator from Oregon [Mr. LUSK], the Senator from Montana [Mr. MURRAY], the Senator from Wyoming [Mr. O'MAHONEY], the Senator from Florida [Mr. SMATHERS], are absent on official business.

I further announce that the Senator from Missouri [Mr. HENNING] is absent because of illness.

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Mr. KUCHEL. I announce that the Senator from Iowa [Mr. MARTIN] is absent, by leave of the Senate, on official business.

The results was announced—yeas 48, nays 37, as follows:

[No. 318]

YEAS—48

Anderson	Dodd	Hill
Bartlett	Eastland	Holland
Bible	Ellender	Jackson
Burdick	Engle	Johnson, Tex.
Byrd, W. Va.	Ervin	Johnston, S.C.
Cannon	Frear	Jordan
Carroll	Green	Kennedy
Church	Gruening	Long, Hawaii
Clark	Hart	Long, La.

McCarthy
McClellan
McGee
McNamara
Magnuson
Mansfield
Monroney

Morse
Moss
Proxmire
Randolph
Robertson
Russell
Sparkman

Stennis
Symington
Talmadge
Thurmond
Williams, N.J.
Yarborough
Young, Ohio

NAYS—37

Alken
Allott
Beall
Bennett
Bridges
Bush
Butler
Capehart
Carlson
Case, N.J.
Case, S. Dak.
Cooper
Cotton

Curtis
Dirksen
Dworsnak
Fong
Goldwater
Gore
Hickenlooper
Hruska
Javits
Keating
Kuchel
Lausche
Morton

Mundt
Muskie
Pastore
Prouty
Saltonstall
Schoeppel
Scott
Smith
Wiley
Williams, Del.
Young, N. Dak.

NOT VOTING—15

Byrd, Va.
Chavez
Douglas
Fulbright
Hartke

Hayden
Henning
Humphrey
Kefauver
Kerr

Lusk
Martin
Murray
O'Mahoney
Smathers

So the resolution (S. Res. 334) was agreed to, as follows:

Resolved, That it is the sense of the Senate that the making of recess appointments to the Supreme Court of the United States may not be wholly consistent with the best interests of the Supreme Court, the nominee who may be involved, the litigants before the Court, nor indeed the people of the United States, and that such appointments, therefore, should not be made except under unusual circumstances and for the purpose of preventing or ending a demonstrable breakdown in the administration of the Court's business.

Mr. HART. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. JOHNSTON of South Carolina. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now is on agreeing to the committee amendment to the preamble.

The amendment was agreed to.

The preamble, as amended, was agreed to, as follows:

Whereas one of the solemn constitutional tasks enjoined upon the Senate is to give or withhold its advice and consent with respect to nominations made to the Supreme Court of the United States, doing so, if possible, in an atmosphere free from pressures inimical to due deliberations; and

Whereas the nomination of a person to the office of Justice of the Supreme Court should be considered only in the light of the qualifications the person brings to threshold of the office; and

Whereas Presidents of the United States have from time to time made recess appointments to the Supreme Court, which actions were unquestionably taken in good faith and with a desire to promote the public interest, but without a full appreciation of the difficulties thereby caused the Members of this body; and

Whereas there is inevitably public speculation on the independence of a Justice serving by recess appointment who sits in judgment upon cases prior to his confirmation by this body, which speculation, however ill founded, is distressing to the Court, to the Justice, to the litigants, and to the Senate of the United States: Now, therefore, be it

ORDER OF BUSINESS

Mr. DIRKSEN. Mr. President, I should like to ask the acting majority

leader whether any other legislation is scheduled for action tonight. It was my earlier impression that at the conclusion of action on the resolution which came from the Judiciary Committee, that would terminate the business for today; but I am informed there are some bills presently pending on the calendar which the acting majority leader intends to call up. Some of them are controversial; others probably not controversial. But it would be an excellent thing now if a statement were made to the Members of the Senate, while they are present, about what the remaining business is for tonight, and how long it is proposed to remain in session this evening.

CREATION OF THE FREEDOM COMMISSION

Mr. MANSFIELD. Mr. President, I move that Calendar No. 1882, Senate bill 1689, establishing the Freedom Commission, be laid before the Senate as the unfinished business.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1689) to create the Freedom Commission for the development of the science of counteraction to the world Communist conspiracy for the training and development of leaders in a total political war.

The PRESIDING OFFICER. The question is on the motion of the Senator from Montana.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments.

LEGISLATIVE PROGRAM—ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, it is the intention of the leadership, after consultation with the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN], to announce that the following measures may be called up for consideration in the days to come, depending on the amount of time taken in debate:

Calendar No. 1884, House bill 10548, to amend the Helium Act.

Calendar No. 1897, House bill 12483, to amend section 801 of the act entitled "An act to establish a code of law for the District of Columbia."

Calendar No. 1916, Senate bill 3713, providing a salary increase for District of Columbia policemen and firemen.

Calendar No. 1939, House bill 2074, for the relief of Eric and Ida Mae Hjelpe.

Calendar No. 1965, House bill 4428, for the relief of John David Aleida.

Calendar No. 1607, House bill 4601, amending the Hiss Act.

Calendar No. 1671, Senate bill 3421, amending the Federal Employees Group Life Insurance Act.

Calendar No. 1678, House bill 10, dealing with self-employed pension plans.

Calendar No. 1706, Senate bill 3258, amending the District of Columbia Alcoholic Beverage Control Act.